HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 13 of 2004

Smt. Koshila Chopta ..... Revisionist

Vs.

Sri Furkan & others .....Respondents

Sri Ramji Srivastava, Advocate for the revisionist
Sri Lalit Tiwari, Advocate for the respondents.

Dated: 14-9-2004

Hon'ble Rajesh Tandon J.

Heard the learned counsel for the parties.

The present revision has been field against the order dated 15.1.2004 passed by the Civil Judge (JD), Dehradun rejecting the application No. 129 C2 filed by the revisionist for filing additional affidavit.

Briefly stated that the plaintiff revisionist has filed a suit for permanent injunction restraining the defendants from interfering in any manner in the property in suit. During the pendency of the suit, petitioner has filed an application for bringing the evidence under Order 18 Rule 4 C.P.C. The short submission of the revisionist is that in the examination-in chief the paper no. has been omitted. The relevant paragraphs are quoted below:

2. यह कि भूलवष संख्या 125 सी–2 द्वारा समर्पित examination in Chief अन्तर्गत आदेष 18 नियम 4 जाब्ता दीवानी में पृष्ठ 2 चरण संख्या 8 में अपेक्षित रक्बे का विवरण छूट गया है।

3. यह कि उपरोक्त द्वारा पूर्व में समर्पित शपथपत्र के पृष्ठ 2 चरण संख्या 8 की अंतिम पंक्ति में शब्द वर्ग गज से पूर्व शब्द 170 अंकित समझा जाये।

According to the revisionist he wanted to add the said fact by way of additionalaffidavit as earlier also he has field the evidence in accordance with substituted provision as contained under Order 18 Rule 4 C.P.C. by way of oral evidence. The prayer made by the applicant is fully covered by the provisions of Order 18 Rule 4 C.P.C.

Justice oriental approach requires that one a party has given the affidavit he may be way of supplementing the same may adduce additional fact by way of additional affidavit.

Further by virtue of the amendment made in the Code of Civil Procedure recording of evidence by affidavit has been provided under Order XVIII R.4. The Apex Court in the case Ameer Trading Corporation Ltd. vs. Shapooriji Data Processing Ltd. [2004 (96) RD 386] has held as under:

"15. The aforementioned provision has been made to curtail the time taken by the Court in examining a witness in-chief. Sub rule (2) of Rule of Order 18 or Code of Civil Procedure provides for cross examination and re-examination of witness which shall be taken by the Court or the commissioner appointed by it.

16. We may notice that Rule 4 of Order 18 was amended with effect from 1.7.2002 specifically provided thereunder that the examination in-chief in every case shall be on affidavit.

Rule 5 of Order 18 had been incorporated even prior to the said amendment.

18. It, therefore, appears that whereas under the unlamented Rule, the entire evidence was required to be adduced in court, now the examination-in-chief of a witness including the party to a suit is to be tendered on affidavit. The expression" in every case" are significant. What, thus, remains, viz. Cross-examination or re-examination in the appeasable cases will have to be considered in the manner laid down in the Rules, subject to the other sub rules of Rule 4.

Since the affidavit was field earlier, the interest of justice requires that the petitioner may be permitted to file additional affidavit.

The revision is, therefore, allowed and the revisionist is permitted to file additional affidavit in the trial Court. The trial Court is directed to expedite the disposal of the suit preferably within six months.

No order as to costs.

(Rajesh Tandon, J.)

14.9.2004

*Dhyani